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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS-2014-0106]

RIN 0579-AE10

Importation of Phalaenopsis Spp. Plants for Planting in Approved Growing Media From China to the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations governing the importation of plants for planting to authorize the importation of Phalaenopsis spp. plants for planting from China in approved growing media into the continental United States, subject to a systems approach. The systems approach would consist of measures that are currently specified in the regulations as generally applicable to all plants for planting authorized importation into the United States in approved growing media. This proposed rule would allow for the importation of Phalaenopsis spp. plants for planting from China in approved growing media, while providing protection against the introduction of plant pests.

DATES: We will consider all comments that we receive on or before [Insert date 60 days after date of publication in the Federal Register].

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2014-0106>.
- Postal Mail/Commercial Delivery: Send your comment to Docket No. APHIS-2014-0106, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238.

Supporting documents and any comments we receive on this docket may be viewed at <http://www.regulations.gov/#!docketDetail;D=APHIS-2014-0106> or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799-7039 before coming.

FOR FURTHER INFORMATION CONTACT: Ms. Lydia E. Colón, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1236; (301) 851-2302.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR part 319 prohibit or restrict the importation of certain plants and plant products into the United States to prevent the introduction of quarantine plant pests. The regulations contained in “Subpart--Plants for Planting,” §§ 319.37 through 319.37-14 (referred to below as the regulations), prohibit or restrict, among other things, the importation of living plants, plant parts, and seeds for propagation or planting.

The regulations differentiate between prohibited articles and restricted articles. Prohibited articles are plants for planting whose importation into the United States is not authorized due to the risk the articles present of introducing or disseminating plant pests.

Restricted articles are articles authorized importation into the United States, provided that the articles are subject to measures to address such risk.

Conditions for the importation into the United States of restricted articles in growing media are found in § 319.37-8. Within that section, the introductory text of paragraph (e) lists taxa of restricted articles that may be imported into the United States in approved growing media, subject to the provisions of a systems approach. Paragraph (e)(1) of § 319.37-8 lists the approved growing media, while paragraph (e)(2) contains the provisions of the systems approach. Within paragraph (e)(2), paragraphs (i) through (viii) contain provisions that are generally applicable to all the taxa listed in the introductory text of paragraph (e), while paragraphs (ix) through (xi) contain additional, taxon-specific provisions.

Currently, Phalaenopsis spp. plants for planting from China are not authorized for importation into the United States in approved growing media. However, the Animal and Plant Health Inspection Service (APHIS) has received a request from the national plant protection organization (NPPO) of China to authorize the importation of Phalaenopsis spp. plants for planting in approved growing media into the continental United States.

In evaluating China's request, we prepared a pest risk assessment (PRA) and a risk management document (RMD). Copies of the PRA and the RMD may be obtained from the person listed under FOR FURTHER INFORMATION CONTACT or viewed on the Regulations.gov Web site (see ADDRESSES above for instructions for accessing Regulations.gov).

The PRA, titled "Importation of Phalaenopsis spp. Orchid Plants in Approved Growing Media from China into the Continental United States; A Pathway-Initiated Pest Risk Assessment," analyzed the potential pest risk associated with the importation of Phalaenopsis

spp. plants for planting in approved growing media into the continental United States from China.

The PRA identified four quarantine pests that could be introduced into the continental United States through the importation of Phalaenopsis spp. plants for planting from China in approved growing media:

- Spodoptera litura, tropical armyworm;
- Thrips palmi, melon thrips;
- Cylindrosporium phalaenopsidis, a pathogenic fungus that causes orchid black spot;
- Lissachatina fulica, the giant African snail.

The PRA determined that these four pests pose a medium risk of following the pathway of Phalaenopsis spp. plants for planting in approved growing media from China into the continental United States and having negative effects on U.S. agriculture.

Based on these risk ratings, the RMD, titled “Importation of Phalaenopsis spp. Orchids in Approved Growing Media from China into the Continental United States,” identifies the phytosanitary measures necessary to ensure the safe importation into the continental United States of Phalaenopsis spp. plants for planting in approved growing media from China. The RMD finds that the mitigations that are currently specified in paragraphs (e)(2)(i) through (e)(2)(viii) of § 319.37-8 and that are generally applicable to the importation of all restricted articles authorized importation into the United States in approved growing media will mitigate the risk associated with the importation Phalaenopsis spp. plants for planting in approved growing media from China into the continental United States.

Accordingly, we propose to amend the introductory text of paragraph (e) of § 319.37-8 to add Phalaenopsis spp. plants for planting from China to the list of taxa authorized importation

into the United States in approved growing media. We also propose to add a paragraph (e)(2)(xii) to § 319.37-8 that would specify that such plants for planting may only be imported into the continental United States.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis, which is summarized below, regarding the economic effects of this proposed rule on small entities. Copies of the full analysis are available by contacting the person listed under FOR FURTHER INFORMATION CONTACT or on the Regulations.gov Web site (see ADDRESSES above for instructions for accessing Regulations.gov).

Based on the information we have, there is no reason to conclude that adoption of this proposed rule would result in any significant economic effect on a substantial number of small entities. However, we do not currently have all of the data necessary for a comprehensive analysis of the effects of this proposed rule on small entities. Therefore, we are inviting comments on potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from the implementation of this proposed rule.

APHIS is proposing to amend the regulations in 7 CFR 319.37-8(e) to authorize the importation from China into the continental United States of orchids of the genus Phalaenopsis established in an approved growing medium, subject to specified growing, inspection, and certification requirements.

Currently, only bare-rooted Phalaenopsis spp. plants for planting may be imported from China into the United States. Eliminating this restriction by allowing the importation of plants in growing media, as well as bare-rooted plants, is expected to increase the number and quality of orchids imported from China by U.S. producers, who then finish the plants for the retail market. This change could result in cost savings for these U.S. producers, which may or may not be passed on to U.S. buyers. The amended regulations could also result in the importation of market-ready Phalaenopsis spp. in approved growing media from China that would directly compete at wholesale and retail levels with U.S. finished potted orchids. The latter scenario is considered unlikely, given the technical challenges and additional marketing costs incurred when shipping finished plants in pots.

The Small Business Administration (SBA) small-entity standard for entities involved in Floriculture Production (NAICS 111422) is \$750,000 or less in annual receipts. The number of entities participating in this broadly defined industry was 26,963 in 2012, with \$5.9 billion in sales that year. Orchid producers numbered 177 in 2012, or 0.6 percent of the total industry. In 2013, the average wholesale value of orchids produced by the largest producers was \$1.4 million. These businesses fall above the SBA threshold for small entities. However, this average sales value excludes sales by an unknown number of smaller establishments that qualify as small entities by the SBA definition.

While many of the U.S. entities that would be affected by the proposed rule such as orchid producers and importers may be small by SBA standards, we expect economic effects for these entities to be modest. We welcome informed public comment that would enable us to better determine the extent to which U.S. small entities may be affected positively or negatively by this proposed rule.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

National Environmental Policy Act

To provide the public with documentation of APHIS' review and analysis of any potential environmental impacts associated with the importation of Phalaenopsis spp. plants in approved growing media from China into the continental United States, we have prepared an environmental assessment. The environmental assessment was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 et seq.), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500-1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The environmental assessment may be viewed on the Regulations.gov Web site or in our reading room. (A link to Regulations.gov and information on the location and hours of the reading room are provided under the heading ADDRESSES at the beginning of this proposed rule.) In addition, copies may be obtained by calling or writing to the individual listed under FOR FURTHER INFORMATION CONTACT.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the information collection or recordkeeping requirements included in this proposed

rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. APHIS-2014-0106. Please send a copy of your comments to: (1) Docket No. APHIS-2014-0106, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238, and (2) Clearance Officer, OCIO, USDA, Room 404-W, 14th Street and Independence Avenue SW., Washington, DC 20250.

APHIS is proposing to amend the plants for planting regulations to allow the importation of Phalaenopsis spp. plants for planting in approved growing media from China into the continental United States. As a condition of entry, the plantlets would have to be produced in accordance with a systems approach. This action would allow for the importation of Phalaenopsis spp. plants for planting from China into the continental United States in approved growing media while providing protection against the introduction of plant pests.

Allowing Phalaenopsis spp. plants for planting to be imported into the continental United States will require information collection activities, including phytosanitary certificates, inspections, agreements between producers and the NPPO of China, and an agreement between the NPPO of China and APHIS.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

- (2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.6956 hours per response.

Respondents: NPPO of China, producers, exporters.

Estimated annual number of respondents: 5.

Estimated annual number of responses per respondent: 4.6.

Estimated annual number of responses: 23.

Estimated total annual burden on respondents: 16 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851-2727.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this

proposed rule, please contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851-2727.

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we propose to amend 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701-7772, and 7781-7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. Section 319.37-8 is amended as follows:

a. In the introductory text of paragraph (e), in the entry for “Phalaenopsis spp. from Taiwan”, by adding the words “and the People’s Republic of China” after the word “Taiwan”.

b. By adding a paragraph (e)(2)(xii).

The addition reads as follows:

§ 319.37-8 Growing media.

* * * * *

(e) * * *

(2) * * *

(xii) Plants for planting of Phalaenopsis spp. from the People's Republic of China may only be imported into the continental United States, and may not be imported or moved into Hawaii or the territories of the United States.

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Done in Washington, DC, this 22nd day of May 2015.

Kevin Shea

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2015-13162 Filed: 5/29/2015 08:45 am; Publication Date: 6/1/2015]